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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4819 of 1996

Petitioner : Dr. Shiv Narayan Mishra

Versus

Respondents : D.A.V. College Managing Committee through its President, Chitragupta Marg, New Delhi and others

Post for order on 21st March, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4819 of 1996

Petitioner : Dr. Shiv Narayan Mishra aged about 37 years, son of Shri Pandit Jeevan Prasad Mishra, Trained Graduate Teacher, D.A.V. Public School Basant Vihar, S.E.C.L. Bilaspur

Versus

Respondents :1. D.A.V. College Managing Committee through its President, Chitragupta Marg, New Delhi.
2. The Regional Director, D.A.V. Public School, M.P. Zone Bhilai District Durg
3. The Principal D.A.V. Public School, Basant Vihar, S.E.C.L. Bilaspur
4. The General Manager, South Eastern Coal fields limited, Head Quarter, Bilaspur as the Chairman of the Local Managing Committee, DAV Public School, Vasant Bihar SECL, Bilaspur - 495-006

SB : Hon'ble Shri Satish K. Agnihotri, J.

Present: Dr. Shiv Narayan Mishra, the petitioner in person.
Mr. Manindra Shrivastava, Senior Advocate with Mr. Ashish Shrivastava, Advocate for the respondents No. 1 to 3.
Mr. P.S. Koshy, Advocate for the respondent No. 4.

ORDER

(Passed on this 21st day of March, 2007)

1. In the instant petition, the petitioner is questioning the legality and validity of the show-cause dated 9.2.96 (P/9), whereunder the petitioner was directed to submit B.Ed degree certificate within one month time from the date of the notice, failing which the services of the petitioner was to be terminated. The order dated 26.2.96 (P/10), whereby on failure to produce B.Ed. Examination Certificate, the nature of appointment of the petitioner was changed from probation to

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ad hoc with one more chance to produce B.Ed. Examination Certificate before 30th April 96 and Establishment Manual (P/15). It is further sought for a direction to the respondents not to compel the petitioner to submit B.Ed. Examination Certificate and further, the petitioner be granted regular pay scale with all the benefits with allocation of official accommodation.

2. The indisputable facts, in nutshell, are that pursuant to the advertisement for appointment to the post of Trained Graduate Teacher (TGT), the petitioner applied and was selected for appointment on 1.7.92 (P/7). In the appointment letter by clause 22, the petitioner was directed to submit original certificates of M.A.; B.A.; B.Ed, & Matriculation along with photostat within two weeks of joining as also 2 copies of passport size photograph. The appointment of the petitioner was on probation for a period of two years, w.e.f. the date of joining the post. The petitioner failed to obtain B.Ed. Degree despite several opportunities granted to him. Ultimately vide order dated 26.2.96 (P/10), the services of the petitioner was changed from probation to ad hoc with one more opportunity to submit B.Ed Examination Certificate before 30th April 96 and ad hoc appointment of the petitioner was further extended vide order dated 18.4.1996 (R/9) for a period of one year with the condition that he should clear his B.Ed. examination in the year of 1996 otherwise his services would be terminated. The petitioner could obtain B.Ed. Examination Certificate in the Month of December, 1996. Accordingly, a fresh appointment on probation of two years was granted to the petitioner vide order dated 3.2.97 (R/10).

3. The petitioner has filed this petition on the ground that the appointment of the petitioner on probation period vide order dated 3.2.97 (R/10) was not conditional and subject to submission of B.Ed. certificate. It was only that the appointment was on probation on the post of Trained Graduate Teacher for a period of two years. The direction to the effect of submission of B.Ed. Examination Certificate within a period of two years was not a condition precedent and it was after thought. Change of the nature of the appointment from probation to ad hoc was unlawful as there is no system to convert the nature of appointment. Even if, the petitioner has failed to produce B.Ed. Examination Certificate within a period of two years as this was not clearly stated in the appointment order.

4. Dr. Shiv Narayan Mishra, appearing-in-person, would submit that the requirement of submitting B.Ed. Examination Certificate within a period of two years was not a condition precedent as in other cases namely in the case of one Shri P. Pathak, P.R.T. D.A.V. Goa Coal Mines Shihbhumi (W), he was exempted from obtaining B.Ed. Degree/diploma or certificate after completion of 15 years of service. He further contended that the petitioner is entitled to regular pay scale, seniority, increments and allocation of official accommodation with effect from the initial date of appointment.

5. Per contra, Mr. Manindra Shrivastava, learned Senior Advocate with Mr. Ashish Shrivastava, learned Advocate appearing for the respondents No. 1 to 3 would submit that appointment of Trained Graduate Teacher itself indicates that the Trained Graduate means having graduation in education, only the teachers or candidates having B.Ed. Degree are Trained Graduate. The clause 22 of the

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appointment order clearly indicates that the petitioner was required to submit M.A.; B.A.; B.Ed, & Matriculation certificates in original along with photostat within two weeks of joining as also 2 copies of passport size photograph. Thus, the contention of the petitioner that it was not a pre-condition is contrary to records. The petitioner, having understood the requirement of qualification, has tendered the undertaking dated 4.9.92 (R/2) to the effect that he would complete B.Ed. training within two years i.e. before July 94. The petitioner has deliberately concealed this fact from this Court. The petitioner has already accepted each and every condition of obtaining and submission of B.Ed. Certificate within two years i.e. before July 1994. Learned counsel would further submit that this petition deserves to be dismissed on this ground alone that the petitioner has not come with clean hands and suppressed most material facts until it was disclosed by the respondents. Learned counsel relies on a decision of the Supreme Court in the case of **Agricultural And Processed Food Products Vs. Oswal Agro Furane & others and connected matters**[1]. He would further submit that B.Ed. Examination Certificate is essential requirement for appointment on the post of Trained Graduate Teacher. It was next contended that concerned D.A.V. School is affiliated to the Central Board of Secondary Education and the educational qualification for appointment on the post of Trained Graduate Teacher is graduate in/with the subject concerned or its equivalent, a recognized Degree/Diploma in Education and B.A. Ed. with the language concerned of the Regional Colleges of Education. He further submits that the petitioner was not confirmed on completion of two years on the ground of non-submission of essential qualification certificate i.e. B.Ed. Examination Certificate. After having given three

years time, the nature of appointment of the petitioner was changed from probation to ad hoc. In ordinary course, the respondents ought to have terminated services of the petitioner, however, taking the lenient view, he was allowed to continue, but on ad hoc basis. Immediately after he obtained B.Ed Examination Certificate, the petitioner was re-appointed on probation on the post of Trained Graduate Teacher w.e.f. 9.1.97 vide order dated 20.1.97 (P/13).

6. Mr. P.S. Koshy, learned counsel appearing for the respondent No. 4 would adopt the submissions made by learned counsel appearing for the respondents No. 1 to 3.

7. I have heard Dr. Shiv Narayan Mishra, the petitioner in person and learned counsel appearing for the respondents and have perused the pleadings and documents appended thereto.

8. It is well established that the requirement of the essential qualification for appointment on the post of Trained Graduate Teacher as per the Central Board of Secondary Education for its affiliation in/with the subject concerned or its equivalent, a recognized Degree/Diploma in Education and B.A. Ed. with the language concerned of the Regional Colleges of Education. It is further admitted that the petitioner was appointed on probation for a period of two years from the date of joining the post vide order dated 1.7.92 (P/7). Clause 22 of the appointment letter clearly provides that the appointee (petitioner) was required to submit original certificates of M.A.; B.A.; B.Ed. & Matriculation along with Photostat copies. This also indicates that the petitioner was required to have essential qualification of B.Ed. for appointment on the post of Trained Graduate Teacher. Clause 11 of the appointment letter provides for termination. In the present case,

since the petitioner failed to produce B.Ed. Examination Certificate within the stipulated time, he was liable to be terminated immediately after completion of probation period. The petitioner accordingly filed a undertaking stating therein as under "I hereby undertake that I will complete B Ed training within two years i.e. before July 1994".

9. The petitioner was served a show-cause notice dated 9.2.96 (P/9) to the effect that the petitioner would neither be confirmed nor increment would be released until completion of B.Ed. Degree Course. It was further stated that the petitioner was required to submit B.Ed. Degree passed certificate within one month time from the date of notice, failing which the services of the petitioner would remain terminated on the expiry of one month from the date of issue of the letter. Thereafter, vide order dated 26.2.96 (P/10) he was informed to submit B.Ed. degree before 30th April 96, failing which his services would be no more required. The petitioner failed to do the needful within the prescribed time. Accordingly, vide order dated 20.4.96 (P/11) on the basis of the recommendation of the Regional Director D.A.V. Public School, M.P. (Zone), appointment of the petitioner came to an end and as a very special case, instead of terminating of his service, the petitioner was allowed to work on ad hoc basis for one year on the condition that he should obtain B.Ed. Certificate in the year of 1996. The petitioner obtained B.Ed. Examination Certificate in the month of December, 1996. Accordingly, vide order dated 20.1.97 (P/13) a fresh appointment order was passed on the same terms and conditions on probation basis.

10. There is no merit in the present case as the petitioner knew very well that the essential qualification of appointment for the post of Trained

Graduate Teacher was B.Ed Examination Certificate. The petitioner had given an undertaking which he has concealed in his petition. It appears that the respondents taking lenient view appointed the petitioner on ad hoc basis in lieu of terminating of his service on default to submit B.Ed. Examination Certificate within the prescribed time. The subsequent appointment vide order 20.1.97 (P/13) is perfectly valid and legal. The petitioner cannot be held as regular appointee with effect from 1.7.92 as the petitioner has failed to comply with the terms and conditions. Thus, no right has accrued in favour of the petitioner to seek reliefs as sought for in this petition. The petition can be dismissed on this ground alone that the petitioner has not come with clean hands before this Court. Even on merit, the petitioner has no case.

11. The Hon'ble Supreme Court, in the case of ***Mahesh Kumar Agal*** **vs.** ***Director General of Police and another***[2], held as under :-

> "**2.** Passing the Hindi test is a condition for promotion and since the appellant had passed the test on 20-9-1981, he was given promotion and seniority was fixed with effect from the passing of the said test. Under these circumstances, we do not find any illegality in the order passed by the tribunal warranting interference."

12. The Hon'ble Supreme Court, in the case of ***M.P. Chandoria*** **vs.** ***State of M.P. and others***[3], held as under :-

> "**5.** ..... In view of the admitted position that he did not pass the test, the appointing authority considered that his seniority would be counted w.e.f. the date of his passing the test. Rule 12(a)(ii) clearly empowers the appointing authority to assign, in these circumstances, the seniority in lower level than the one

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assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test."

13. The above view has been later on approved by the Supreme Court in the case of ***State of M.P.*** **vs.** ***Ramkinkar Gupta and others***[4], and also in the case of ***Om Prakash Shrivastava*** **vs.** ***State of M.P. and another***[5].

14. As a result and for the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (1996) 4 SCC 297
2 (1996) 2 SCC 70
3 (1996) 11 SCC 173
4 (2000) 10 SCC 77
5 (2005) 11 SCC 488

B/-